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November 3, 2005

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: May 19, 2005

Case Number: TSO-0247

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as "the individual") for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." ¹

I. BACKGROUND

The individual was hired by a Department of Energy (DOE) contractor, which requested a security clearance on his behalf. A background investigation of the individual was performed, and this investigation uncovered information that raised doubts about his eligibility for access authorization. In an attempt to resolve these doubts, the individual was summoned by the local security office for an interview by a personnel security specialist. After this Personnel Security Interview (PSI), the individual was referred to a local psychiatrist (hereinafter referred to as "the DOE psychiatrist") for an agency-sponsored evaluation. The DOE psychiatrist prepared a written report setting forth the results of that evaluation and submitted it to the local security office.

Subsequently, the local security office reviewed the individual's file and determined that derogatory information existed that cast into doubt the individual's eligibility for a security clearance. The manager of that office informed the individual of this determination in a letter that set forth in detail the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his eligibility for access authorization. The individual requested a hearing on this matter. The Manager forwarded this request to the Office of Hearings and Appeals and I was appointed the Hearing Officer.

¹An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as access authorization or a security clearance.

II. STATEMENT OF DEROGATORY INFORMATION

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraphs (h), (j) and (k) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8. Specifically, the Letter alleges that the individual "has been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependent or as suffering from alcohol abuse" (paragraph (j)), and that this is an "illness or mental condition which, in the opinion of a psychiatrist causes, or may cause, a significant defect in [the individual's] judgment or reliability" (paragraph (h)).

As support for these claims, the Letter cites the DOE psychiatrist's report, in which he concludes that the individual suffers from Alcohol Abuse and that the individual was a user of alcohol habitually to excess from 1996 to 1998 and again in 2004. The DOE psychiatrist also found that the individual's Alcohol Abuse is an illness or mental condition that causes, or may cause, a significant defect in his judgement or reliability within the meaning of paragraph (h). The Letter also refers to the individual's DUI arrest in 2000 and his DWI arrest in April 2004, both of which resulted from incidents in which the individual rolled his car over during accidents.

The Letter further alleges that the individual "has possessed, used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances established pursuant to Section 2002 of the Controlled Substances Act of 1970 . . . except as prescribed or administered by a physician . . . or as otherwise authorized by federal law" within the meaning of 10 C.F.R. § 710.8(k) (paragraph (k)). In this regard, the Letter cites statements that the individual made during his PSI indicating that he used marijuana approximately 15 times from 1993 to 1997 and cocaine approximately five times in 1994.

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after consideration of all relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether granting or restoring the individual's security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). *See Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (*affirmed* by OSA, 1996), and cases cited therein. For the reasons that follow, I conclude that the individual has not made this showing, and that he should therefore not be granted a security clearance at this time.

IV. THE HEARING

At the hearing, the individual did not dispute the allegations set forth in the Notification Letter or the DOE psychiatrist’s diagnosis. Instead, through his own testimony and that of his father, his girlfriend, an Employee Assistance Program (EAP) counselor and his Alcoholics Anonymous (AA) sponsor, he attempted to demonstrate rehabilitation or reformation from alcohol abuse. The DOE psychiatrist testified for the DOE.

The individual’s father testified that the individual is living with him and with the individual’s mother. The individual has completely refrained from using alcoholic beverages since his last alcohol-related arrest in April 2004, the father added, and he has never seen the individual use illegal drugs. Hearing Transcript (Tr.) at 8, 13. Since April 2004, the individual has attended AA meetings regularly, is “more calm” about his social activities and more attentive to his work. Tr. at 9. The individual is unlikely to drink again, the father asserted, because of the effect that the April 2004 accident had on his mother, and because of the damage that was done to his truck. Tr. at 9-10. He concluded that the individual is very motivated in his rehabilitation and that the individual “doesn’t get close” to alcohol when he is in places where it is being served. Tr. at 10.

The individual’s girlfriend testified that she has not seen the individual consume alcoholic beverages since the date of his April 2004 accident and subsequent DWI arrest, nor has she detected any signs of alcohol use, such as slurred speech or the smell of alcohol on the individual’s breath since that date. Tr. at 17. She added that they have been in social situations where alcohol is available, and the individual has abstained. The girlfriend stated that while she sometimes drinks, she will not do so in the individual’s presence. Tr. at 19. The April 2004 accident and resulting DWI arrest “was a pretty big deal for [the individual],” and was “definitely a reality check. . . ,” she concluded. “Since then, he has just been a completely different person. He has . . . had [no] alcohol, he’s been just very responsible, and he’s very

dedicated to his work, . . . , and he's really on check with his life now since alcohol has not become a part of it" Tr. at 19-20.

The individual testified that he is "totally committed to a lifetime of abstinence from alcohol." Tr. at 26. Through "a lot of soul-searching" and through AA, he's learned that he "did have a problem with alcohol." He came to recognize that he could go out on one occasion and have a couple of drinks and be fine, but that on other occasions he would go out and "couldn't stop [drinking] and wouldn't be able to stop [drinking], and I know that I don't want to do that anymore. I have too much to lose." *Id.* When asked why he continued drinking after his accident and subsequent DUI arrest in 2000, he stated that he did stop drinking for four months, but then he resumed drinking. He attributed this resumption to youth and to wanting to fit into the "college lifestyle." Tr. at 27-28. He is now older and "settled down, I have my steady job," he explained, and "I have to start from now and be responsible and be a law-abiding citizen." *Id.*

The individual began attending AA in June 2004, typically goes to one meeting per week, and is actively working on AA's 12-step program. Tr. at 33, 65. He has taken a leadership role in the group whose meetings he attends, having recently been elected treasurer and having led group sessions on occasion. Tr. at 33. He also meets with his sponsor and other AA attendees away from the meetings on occasion to discuss issues relating to maintaining his sobriety. Tr. at 66-67. The individual then briefly addressed his previous illegal drug usage, saying that his consumption of marijuana and cocaine occurred during his high school and college years, over 10 years ago. He testified that he has no intention of using these drugs in the future. Tr. at 31-32.

The individual's EAP counselor then testified. He said that he has met with the individual approximately 12 times since the April 2004 DWI, and that the individual is sincere and highly motivated not to drink. Tr. at 41-42. He added that the individual has kept the commitments he made to the EAP counselor, *i.e.*, he has maintained his sobriety, attended alcohol education and awareness training, and continued to attend AA meetings. Tr. at 45.

The individual's AA sponsor testified that he has served in that capacity since the individual began attending AA meetings after his April 2004 accident and arrest. He said that the individual takes a very active role in the meetings, and has a perfect attendance record since his introduction to the group. Tr. at 84. He has never seen the individual drink an alcoholic beverage, nor has he ever seen any indications of alcohol or illegal drug usage in the individual's behavior. Tr. at 85. He concluded by indicating that the individual is very committed to remaining sober and that he is optimistic about the individual's chances of success. Tr. at 86-89.

The DOE psychiatrist also testified. He stated that although the individual also met the diagnostic criteria for Alcohol Dependence, he diagnosed him as suffering from Alcohol Abuse

because the evidence for Abuse was much stronger. Tr. at 50. He further stated that at the time of his initial evaluation of the individual, he was not demonstrating sufficient evidence of reformation or rehabilitation. Tr. at 53.

In his report, he said that in order to show adequate evidence of rehabilitation and reformation, the individual would have to attend AA for a minimum of 100 hours over a one year period, with a sponsor and while working the AA's 12 steps, and be abstinent from alcohol and illegal drugs for at least two years. In the alternative, the individual could complete a professionally-run alcohol treatment program of at least six months' duration and be abstinent from alcohol and illegal drugs for a period of at least two years. In order to demonstrate adequate evidence of reformation without these rehabilitative programs, the individual would have to demonstrate abstinence from alcohol and illegal drugs for at least three years. DOE Exhibit 3 at 20.

At the hearing, the DOE psychiatrist testified that he derived these recommendations from the results of a large study of AA participants. According to that study, those who followed the AA program and remained abstinent for one year had about a 70 percent chance of remaining sober the following year, those who remained abstinent for two years had an 80 percent chance of avoiding a relapse during the following year, and those who were able to abstain for three years had a ninety percent chance of remaining sober. Tr. at 54. Based on these results, the DOE psychiatrist said, he usually recommends strict adherence to the AA program plus two years of abstinence as adequate proof of rehabilitation. *Id.*² At the time of the hearing, the individual had been abstinent for approximately 16 months, and had attended approximately 60 hours of AA meetings. The DOE psychiatrist testified that this was not sufficient to demonstrate adequate evidence of rehabilitation or reformation. Tr. at 56

V. ANALYSIS

The testimony at the hearing and the exhibits submitted by the individual establish that the individual has abstained from alcohol use since his April 2004 accident and that he has regularly attended, and actively participated in, AA meetings since approximately June 2004. Although it is clear that the individual has made substantial progress in his rehabilitation from alcohol abuse,

²Although he noted that the results of the study indicated that AA participants who abstained from alcohol use for two years would have a 20 percent relapse rate during the following year, he opined that the people he evaluates have "better prognostic factors" than the subjects of the study, and that therefore their relapse rate would be lower. Tr. at 54.

I find that the individual has not successfully addressed the DOE security concerns under paragraphs (h) and (j).³

In cases such as these, hearing officers accord great deference to the expert opinions of psychiatrists and other mental health professionals regarding rehabilitation and reformation. *See, e.g., Personnel Security Hearing* (Case No. VSO-0146), 26 DOE ¶ 82,788 (1997) (affirmed by OSA, 1997); *Personnel Security Hearing*, (Case No. VSO-0027), 25 DOE ¶ 82,764 (1995); *Personnel Security Hearing*, (Case No. VSO-0015), 25 DOE ¶ 82,760 (1995). In this case, after hearing all of the testimony offered at the hearing except for that of the individual's AA sponsor, the DOE psychiatrist concluded that the individual was still not demonstrating adequate evidence of reformation or rehabilitation. Tr. at 62.⁴

I find it particularly noteworthy that the DOE psychiatrist's testimony was not contradicted by other expert testimony. Moreover, after reviewing the record in this matter as a whole, including the testimony of the individual's AA sponsor, I find nothing that would persuade me to deviate from the standards of rehabilitation and reformation set forth by the DOE psychiatrist. I am particularly concerned about the fact that after a life-threatening, alcohol-related roll-over accident on an interstate highway, presumably while traveling at highway speeds, the individual resumed drinking after only a brief period of abstinence. This suggests that the individual's drinking problem was and is severe, and leads me to conclude that additional therapy and abstinence are needed in order for him to demonstrate adequate evidence of rehabilitation or reformation from alcohol abuse.

VI. CONCLUSION

Based on the factors discussed above, I find that the individual failed to show rehabilitation or reformation from Alcohol Abuse. I therefore conclude that the individual has not demonstrated that granting him a clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, the individual should not be granted a security

³Since the usages of marijuana and cocaine occurred approximately 10 years ago and there is no evidence of more recent usage, I find the DOE's security concerns under paragraph (k) to have been mitigated by the passage of time.

⁴Although the DOE psychiatrist did not participate in the telephone conference call during which the individual's AA sponsor testified, he did read a letter that the sponsor wrote that was submitted as Individual's Exhibit A. According to the DOE psychiatrist, the letter said "all the right things," Tr. at 63, but it did not dissuade him from his conclusion that the individual was not demonstrating adequate evidence of rehabilitation or reformation. Tr. at 64.

clearance at this time. The individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer
Hearing Officer
Office of Hearings and Appeals

Date: November 3, 2005